

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK,

Plaintiff,

v.

EXXON MOBIL CORPORATION,
EXXONMOBIL OIL CORPORATION, ROYAL
DUTCH SHELL PLC, SHELL OIL COMPANY,
BP P.L.C., BP AMERICA INC. and AMERICAN
PETROLEUM INSTITUTE

Defendants.

Case No. 21-cv-04807 (VEC)

PROTECTIVE NOTICE OF APPEAL

Defendants Exxon Mobil Corporation; ExxonMobil Oil Corporation; Shell plc (f/k/a Royal Dutch Shell plc); Shell USA, Inc. (f/k/a Shell Oil Company); BP p.l.c.; BP America Inc.; and the American Petroleum Institute appeal to the United States Court of Appeals for the Second Circuit from this Court's order granting in part plaintiff's request for fees and costs under 28 U.S.C. § 1447(c). ECF No. 81, at 20–24 (May 8, 2024).¹

Defendants file this notice as a protective matter. Although an award of attorney's fees is ordinarily not appealable until the award has been quantified, *see, e.g., Pannonia Farms, Inc. v. USA Cable*, 426 F.3d 650, 652–53 (2d Cir. 2005), it is unclear whether the Court ultimately will enter any further fee award or relevant order in light of the parties' meet-and-confer ordered by the Court. To avoid forfeiting the right to appeal, *see, e.g., Bowles v. Russell*, 551 U.S. 205, 206–

¹ By filing this protective notice of appeal, the defendants do not waive any right, defense, affirmative defense, or objection, including any challenge to personal jurisdiction.

07 (2007), defendants file this protective notice of appeal within 30 days of the order awarding fees and costs.

DATE: June 7, 2024

Respectfully submitted,

By:

/s/ Daniel J. Toal

Theodore V. Wells, Jr.
Daniel J. Toal

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990
Email: twells@paulweiss.com
Email: dtoal@paulweiss.com

*Attorneys for Defendants Exxon Mobil
Corporation and ExxonMobil Oil
Corporation*

David C. Frederick (*pro hac vice*)
James M. Webster, III (*pro hac vice*)
Daniel S. Severson
Grace W. Knofczynski (*pro hac vice*)

KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.
1615 M Street, NW, Suite 400
Washington, DC 20036
Tel: (202) 326-7900
Fax: (202) 326-7999
Email: dfrederick@kellogghansen.com
Email: jwebster@kellogghansen.com
Email: dseverson@kellogghansen.com
Email: gknofczynski@kellogghansen.com

Loly G. Tor
K&L GATES LLP
599 Lexington Ave.
New York, NY 10022
Tel: (973) 848-4026
Fax: (973) 848-4001
Email: loly.tor@klgates.com

*Attorneys for Defendants Shell plc (f/k/a
Royal Dutch Shell plc) and Shell USA, Inc.
(f/k/a Shell Oil Company)*

Aaron F. Jaroff
MCGUIREWOODS LLP
1251 Avenue of the Americas, 20th Floor
New York, NY 10020-1104
Tel: (212) 548-2133
Email: ajaroff@mcguirewoods.com

Brian D. Schmalzbach (*pro hac vice*)
Jeremiah J. Anderson (*pro hac vice*)
MCGUIREWOODS LLP
Gateway Plaza
800 East Canal Street
Richmond, VA 23219-3916
Tel: (804) 775-100
Email: bschmalzbach@mcguirewoods.com
Email: jjanderson@mcguirewoods.com

*Attorneys for Defendant American Petroleum
Institute*

Nancy G. Milburn
Diana E. Reiter
ARNOLD & PORTER KAYE SCHOLER
LLP
250 West 55th Street
New York, NY 10019-9710
Tel: (212) 836-8000
Fax: (212) 836-8689
Email: nancy.milburn@arnoldporter.com
Email: diana.reiter@arnoldporter.com

John D. Lombardo (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER
LLP
777 South Figueroa Street, 44th Floor
Los Angeles, CA 90017-5844
Telephone: (213) 243-4000
Facsimile: (213) 243-4199
E-mail: john.lombardo@arnoldporter.com

Jonathan W. Hughes (*pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER
LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3100
Facsimile: (415) 471-3400
Email: jonathan.hughes@arnoldporter.com

*Attorneys for Defendants BP p.l.c.
and BP America Inc.*